

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3

4 In re:

No. C 13-5424 CW

5 RALPH DOMINIC VACCARO,

Bk. Nos. 13-54338 ASW
13-05145 ASW

6 Debtor.

7 ORDER DENYING MOTION TO
WITHDRAW THE REFERENCE

8 RALPH VACCARO,

9 Plaintiff,

10 v.

11 LONG BEACH MORTGAGE COMPANY;
SELECT PORTFOLIO SERVICING, INC.;
12 DEUTSCHE BANK NATIONAL TRUST
COMPANY,

13 Defendants.

14 /
15 Defendants Select Portfolio Servicing, Inc. and Deutsche Bank
16 National Trust Company have filed a motion to withdraw the
17 reference to the bankruptcy court for this adversary proceeding.
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19 Pro se Plaintiff and Debtor Ralph Vaccaro did not file a response
20 to the motion to withdraw. Having considered the papers filed by
21 Defendants and the record in the bankruptcy case, the Court DENIES
22 the motion to withdraw the reference.

23 BACKGROUND

24 On August 13, 2013, Debtor filed a voluntary Chapter 13
25 Petition. Defendant Deutsche Bank National Trust Company filed a
26 secured claim in the amount of \$1,028,419.69. On October 18,
27 2013, Debtor filed an adversary proceeding against Long Beach

Mortgage Company, Select Portfolio Servicing, Inc., and Deutsche Bank National Trust Company. In his complaint in the adversary proceeding, Debtor seeks to enjoin foreclosure on his home, on which Defendant Deutsche Bank holds a deed of trust. Debtor alleges that Defendants "broke predatory lending laws and Truth in Lending Act" and seeks damages for violation of the California Consumers Legal Remedies Act, Cal. Civil Code §§ 1750, et seq. Bankruptcy Court 13-54338, Docket No. 1 at ¶ 8.

DISCUSSION

Title 28 U.S.C. § 157 classifies matters in bankruptcy cases as either "'core proceedings,' in which the bankruptcy court 'may enter appropriate orders and judgments,' or 'non-core proceedings,' which the court may hear but for which it may only submit proposed findings of fact and conclusions of law to the district court for de novo review." Security Farms v. Int'l Bhd. of Teamsters, 124 F.3d 999, 1008 (9th Cir. 1997) (quoting 28 U.S.C. § 157).

Claims "arising under" or "arising in" Title 11 of the United States Code are core proceedings. In re Harris Pine Mills, 44 F.3d 1431, 1435 (9th Cir. 1995). A claim arises under Title 11 if it involves "a cause of action created or determined by a statutory provision of Title 11," while a claim arises in Title 11 if it is an administrative matter that arises only in bankruptcy cases. Id. (quoting In re Wood, 825 F.2d 90, 96-97 (5th Cir. 1987)). "If the proceeding does not invoke a substantive right

1 created by the federal bankruptcy law and is one that could exist
2 outside of bankruptcy it is not a core proceeding." Id. (quoting
3 In re Wood, 825 F.2d at 97). "Section 157 . . . mandates
4 withdrawal [of the reference to the bankruptcy court] in cases
5 requiring material consideration of non-bankruptcy federal law."
6 Security Farms, 124 F.3d at 1008 (citing 28 U.S.C. § 157(d)).
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8 "The district court may withdraw, in whole or in part, any
9 case or proceeding referred under [§ 157], on its own motion or on
10 timely motion of any party, for cause shown." 28 U.S.C. § 157(d).

11 "In determining whether cause exists, a district court should
12 consider the efficient use of judicial resources, delay and costs
13 to the parties, uniformity of bankruptcy administration, the
14 prevention of forum shopping, and other related factors."
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16 Security Farms, 124 F.3d at 1008 (citing In re Orion Pictures
17 Corp., 4 F.3d 1095, 1101 (2nd Cir. 1993)). "A district court
18 considering whether to withdraw the reference should first
19 evaluate whether the claim is core or non-core, since it is upon
20 this issue that questions of efficiency and uniformity will turn."
21 In re Orion Pictures Corp., 4 F.3d at 1101.

22 The claims raised by Debtor in the adversary proceeding are
23 not core claims. Rather, Debtor asserts a claim under
24 California's Consumer Legal Remedies Act, and cites other
25 California law and the federal Truth in Lending Act. None of
26 these claims depend on bankruptcy laws, and any of them could
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1 proceed in another court. Accordingly, the Court finds that
2 Debtor's claims are not core issues.

3 Defendants argue that the efficient use of judicial resources
4 supports a finding of cause because the bankruptcy court can only
5 render a final judgment on non-core proceedings if both parties
6 consent. 28 U.S.C. § 157(c). Defendants assert that Debtor does
7 not consent to entry of a final order of judgment by the
8 bankruptcy court. However, Defendants' exhibit states that Debtor
9 "does consent to entry of a final order of judgment by bankruptcy
10 court." Defendants' Request for Judicial Notice, Exhibit G at 3
11 (emphasis added). Defendants do not state that they do not
12 consent to entry of judgment by the bankruptcy court.
13 Accordingly, this factor does not weigh in favor of a finding of
14 cause to withdraw the reference.

15 Defendants also argue that the factor of delay and costs to
16 the parties favors withdrawal because the case was recently filed
17 and Defendants have not yet been served with the complaint.
18 Accordingly, Defendants argue that proceeding in this Court will
19 not result in any undue delay or costs. While there might not be
20 any additional delay or cost to proceeding in this Court,
21 Defendants also have not shown that there would be any delay or
22 cost to proceeding in the bankruptcy court. This factor does not
23 weigh in favor of a finding of cause to withdraw the reference.
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1 The next factor is uniformity of bankruptcy administration.
2 This factor does not weigh in favor of a finding of cause to
3 withdraw the reference.

4 Finally, Defendants argue, "because the district court will
5 be involved in this case regardless of whether the reference is
6 withdrawn, there is no forum shopping." Defendants' Motion at 6.
7 However, this argument is based on Defendants' erroneous
8 contention that Debtor does not consent to entry of judgment by
9 the bankruptcy court. This factor also does not weigh in favor of
10 a finding of cause to withdraw the reference.

12 The Court finds that Plaintiff's claims are not core claims.
13 However, none of the factors to be considered when determining
14 whether cause exists to withdraw the reference weigh in favor of
15 withdrawal of the reference. Accordingly, the Court DENIES the
16 motion to withdraw the reference.
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18 IT IS SO ORDERED.

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20 Dated: 2/27/2014


CLAUDIA WILKEN
United States District Judge

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